

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TEFERI ABEBE BIKILA, an individual;
YETNAYET ABEBE BIKILA, an
individual; TSIGE ABEBE, an individual;
and YEWEBDAR W. GIORGESE, an
individual,

Plaintiffs,

v.

VIBRAM USA, INC., a Delaware
corporation, and VIBRAM FIVEFINGERS,
LLC, a Massachusetts limited liability
company,

Defendants.

No. 3:15-cv-05082-RBL

**STIPULATED MOTION FOR
LEAVE TO FILE DEFENDANTS'
UNREDACTED SECOND MOTION
FOR SUMMARY JUDGMENT AND
SUPPORTING DECLARATIONS
UNDER SEAL**

NOTE ON MOTION CALENDAR:
October 13, 2016

LOCAL RULE 5(g)(3)(A) CERTIFICATION

Pursuant to Local Rule 5(g)(3)(A) and (B), Defendants Vibram USA, Inc. and Vibram FiveFingers LLC (collectively "Vibram") certify that their counsel has conferred in good faith with counsel for Plaintiffs Teferi Abebe Bikila, Yetnayyet Bikila, Tsige Abebe, and Yewebdar W. Giorgese. Plaintiffs do not oppose this motion and stipulate to the entry of Vibram's proposed order.

STIPULATED MOTION FOR LEAVE TO FILE
DEFENDANTS' UNREDACTED SECOND MOTION
FOR SUMMARY JUDGMENT AND SUPPORTING
DECLARATIONS UNDER SEAL - 1
Case No. 3:15-cv-05082-RBL

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1 **MOTION**

2 Pursuant to Local Rule 5(g)(2)(B), Vibram respectfully moves the Court for an order
3 permitting Vibram to file (1) the unredacted version of Defendants' Second Motion for
4 Summary Judgment ("Motion"), (2) the unredacted version of the Declaration of Joanne M.
5 Hepburn in Support of Defendants' Second Motion for Summary Judgment ("Hepburn
6 Declaration"), and (3) the unredacted version of the Declaration of Eric Rosen in Support of
7 Defendants' Second Motion for Summary Judgment ("Rosen Declaration") under seal.

8 Vibram seeks to file redacted versions of the Motion, the Hepburn Declaration, and
9 the Rosen Declaration in the public record. Specifically, the public version of Hepburn
10 Declaration would redact Exhibits P, V, and W to the declaration. The public version of the
11 Rosen Declaration would redact one reference to total sales of the FiveFingers Bikila shoes, a
12 number that is confidential. The public version of the Motion would redact all references to
13 the redacted material from the two declarations.

14 Exhibits P and V to the Hepburn Declaration are excerpts from the deposition
15 transcripts of plaintiffs' experts Dr. Richard Yalch and Serena Morones. It has been less than
16 15 days since counsel received the transcripts for these depositions. Pursuant to the Stipulated
17 Protective Order [Dkt. 30], all deposition testimony must be treated as Attorneys' Eyes Only
18 for 15 days after receipt of the transcripts, to allow the parties to make appropriate
19 confidentiality designations. Additionally, Ms. Morones is plaintiffs' damages expert and her
20 report, which is Exhibit W and is discussed in detail in her deposition testimony (Exhibit V),
21 reflects Vibram's highly confidential financial information, including revenue, profits, and
22 costs.

23 A proposed order granting Vibram's Motion is filed herewith.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 The "starting point" for any record sealing analysis is a "strong presumption in favor
26 of access." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A
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1 party seeking to seal a judicial record then bears the burden of overcoming this presumption
2 by meeting the “compelling reasons” standard. *Id.* That is, the party must articulate
3 compelling reasons supported by specific factual findings that outweigh the general history of
4 access and the public policies favoring disclosure, such as the public interest in understanding
5 the judicial process. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-1179
6 (9th Cir. 2006) (internal citations and quotations omitted). In turn, the Court must
7 “conscientiously balance the competing interests” of the public and the party who seeks to
8 keep certain judicial records secret. *Id.*; *accord Foltz*, 331 F.3d at 1135. After considering
9 these interests, if the Court decides to seal certain judicial records, it must “base its decision
10 on a compelling reason and articulate the factual basis for its ruling, without relying on
11 hypothesis or conjecture.” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)
12 (internal quotations and citations omitted).

13 Any references to Vibram’s confidential financial information should remain under
14 seal. “[U]nder Ninth Circuit law, detailed product-specific financial information, customer
15 information and internal reports are appropriately sealable under the ‘compelling reasons’
16 standard where that information could be used to the company’s competitive disadvantage.”
17 *Asetek Danmark A/S v. CMI USA, Inc.*, 13-CV-00457-JST, 2015 WL 4116738, at *2 (N.D.
18 Cal. July 7, 2015). Because Exhibits V and W reference Vibram’s product specific financial
19 information, the disclosure of which could be used to Vibram’s disadvantage by its
20 competitors, compelling reasons exist to protect this filing from public disclosure. Moreover,
21 sealing Exhibits P and V, which are recently released deposition transcripts, is consistent with
22 the existing Protective Order. Further, the public’s interest in access will not be harmed by
23 the sealing of the exhibits, the information in Mr. Rosen’s declaration, or the Motion because
24 a redacted version of the documents will be filed in the public record and the minimal
25 redactions required will not harm the public’s understanding of the judicial process in this
26 case.

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1 **CONCLUSION**

2 For the foregoing reasons, Vibram respectfully requests that the Court grant this
3 stipulated motion and order that Vibram be allowed to file a redacted version of its Second
4 Motion for Summary Judgment, the Hepburn Declaration, and the Rosen Declaration in the
5 public record, with the unredacted versions of these documents filed under seal.
6

7 DATED this 13th day of October, 2016.
8

9 MOTSCHENBACHER & BLATTNER LLP

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10 By: /s/Alexander C. Trauman
11 Alexander C. Trauman, WSBA # 44400
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FiveFingers LLC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 13, 2016, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 registered CM/ECF users in this action.

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